

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2008, No. 8-Z,
and Meetings of February 8 and March 7, 2008.)**

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice—changes are shown in **bold type**.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240, 315 and 316.5 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215, and 316.5 of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to Klamath River Sport Fishing.

Updated Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed through a cooperative system of State, Federal, and Tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals.

Two Tribal entities within the Klamath River System, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for subsistence fishing and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok Tribes.

Klamath River Fall-Run Chinook

Klamath River fall-run Chinook (KRFC) salmon harvest allocations and spawning escapement goals are established by the PFMC. The KRFC salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The annual KRFC river sport salmon quota is recommended by the PFMC and the 2008 PFMC allocation is currently unknown. All proposed closures for adult Chinook salmon are designed to maximize and equitably distribute harvest of adult KRFC salmon while operating within the annual quota.

Klamath River Spring-Run Chinook

The Klamath River System also supports Klamath River spring-run Chinook salmon (KRSC). Presently, KRSC salmon are managed under the general basin seasons, daily bag limits, and possession limit regulations and are not under PFMC allocation management.

KRFC Salmon Quota Management

The 2007 quota for the Klamath River System river sport harvest was 10,600 adult KRFC salmon. Preseason stock projections of 2008 adult KRFC abundance will not be available from the PFMC until March 2008 and the 2008 basin quota will be recommended by the PFMC and adopted by the Commission at their April 2008 meeting.

For public notice requirements, the Department recommends the Commission consider a range of 0 - **30,000** adult KRFC salmon quota in the Klamath River basin for the river sport fishery. The Commission may modify the KRFC river sport salmon quota which is normally 15% of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

The annual KRFC salmon quota is split evenly, with 50% of the quota allocated to the lower Klamath River downstream of the Highway 96 Bridge at Weitchpec and 50% to the remainder of the upper Klamath River System upstream of the Highway 96 Bridge at Weitchpec and the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon throughout the Klamath River System.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the Klamath River System quota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System quota will be met.

The upper Klamath River System is further divided into three sub-quota areas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,
2. 16.5% for the Trinity River downstream from Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River downstream from Old Lewiston Bridge to Cedar Flat.

These sub-quota areas are based upon historical angler effort distribution and ensure equitable harvest of adult KRFC salmon in the upper Klamath River and Trinity River.

Current Sport Fishery Management

The KRFC salmon annual quota is divided into sub areas and the harvest conducted under real-time quota management. The KRSC salmon harvest is managed under the general basin seasons without real-time monitoring due to lack of adequate funds.

The Department presently differentiates the two stocks by following dates with minor sub-area differences to providing equitable harvest opportunities:

1. December 1 through August 15 - General Season (KRSC).
2. August 15 to November 30 - KRFC quota management.

The daily bag limits and weekly possession limits apply to both stocks within the same sub-area and time period.

Proposed Changes

The Department is proposing the following changes to current regulations:

Open Season and Bag Limits

The Department proposes combining all of the open season and bag limit language into the regulations table contained in (b)(91.1)(E) to have these important regulations found in one location to reduce public confusion and improve angler compliance.

General Area Closures

The general area closures ending dates are proposed to extend until December 31 to provide additional protection to KRFC salmon still in the system.

KRFC Season, Bag Limit, and Possession Limit

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2008 basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the sub quota has been met.

The opening date for the Klamath and Trinity rivers are proposed to be the same for all sub-areas within each river. The Trinity River will open two weeks after the Klamath River to allow for adequate migration time from the ocean. The ending date is proposed to extend until December 31.

The proposed open seasons and range of bag limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
3. Bag Limit - **[0-4]** Chinook salmon - only **[0-3]** fish over 22 inches total length until sub quota is met, then 0 fish over 22 inches total length.

The weekly possession limit is proposed as a range of **0 to 6** Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed. The annual possession limit of no more than 12 Chinook salmon is proposed to be dropped as this measure was not adequately enforceable.

KRSC Season, Bag Limit, and Possession Limit

The wild KRSC salmon are primarily limited to two sub-basins of the Klamath River watershed, the Salmon River and the South Fork of the Trinity River (SFTR). The populations of wild spring-run Chinook salmon in these watersheds appear to be at all time lows.

The Department is proposing more restrictive measures to protect wild KRSC salmon outside of the KRFC quota period.

The proposed open seasons for KRSC salmon stocks are as follows:

1. Klamath River - January 1 to August 14
2. Trinity River - January 1 to August 31
 - a. Except for Trinity River main stem downstream from 250 feet below Lewiston Dam to the Old Lewiston bridge - April 1 to August 31
This section of river is designated as wild trout waters.
3. No Chinook salmon may be retained in the following areas:

- a. Klamath River downstream from Iron Gate Dam to Weitchpec - January 1 to August 14
- b. Trinity River downstream from the South Fork Trinity River mouth to the confluence with the Klamath River - January 1 to August 31

These closures provide protection for naturally produced KRSC while allowing sport harvest opportunities on the hatchery component of the KRSC salmon run in the lower Klamath River.

The bag and possession limits are proposed as a range from 0 to 2 Chinook salmon of any size and the weekly and annual possession limits are proposed to be dropped to provide additional conservation measures.

South Fork Trinity River Season Change

The Department proposes to change the opening dates for angling on the SFTR and Hayfork Creek from the fourth Saturday in May to November 1. Current regulations allow angling in both of these areas from the fourth Saturday in May through March 31. During this period anglers may take hatchery trout/steelhead and brown trout on the SFTR. There is no take of trout on Hayfork Creek. There is no take of Chinook salmon allowed in either system.

The Department recommends that angling on the SFTR downstream of the Hyampom Bridge to its confluence with the Trinity River and Hayfork Creek from the Highway 3 Bridge downstream to its confluence with the SFTR should be open from November 1 through March 31.

Trinity River Trout Bag and Possession Limits

For public notice requirements, the Department proposes increasing the daily bag limit range from 1 to 5 hatchery trout or steelhead and increasing the possession limit range from 1 to 10 hatchery trout or steelhead on the main stem Trinity River downstream from the Old Lewiston Bridge to the confluence with the Klamath River. This will increase angling opportunity to the general public on Trinity River Hatchery stocks and reduce straying of excess hatchery stocks into natural spawning areas.

Brown Trout Bag Limit Change

Based upon public input and Department data that shows no brown trout distribution outside of the Trinity River, the brown trout bag and possession limits will only apply to the main stem of the Trinity River to reduce public confusion and mistaken identification and take of other salmonids of special concern in areas where the brown trout are not found.

Additional minor changes were made to the regulations for clarity.

On March 14, 2008, the PFMC developed three 2008 season options for public review that allowed a range of harvest quotas from 27,100 to 27,400 for the Klamath River Sport Fishery. The Initial Statement of Reasons was amended to increase the upper bound of harvest quota and provide an increased bag and weekly possession limits for additional harvest opportunities. The final PFMC regulation recommendations will be made on April 11, 2008 in Seattle, Washington.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at UC Davis, Bodega Bay Marine Laboratory, Lecture Hall, 2099 Westside Road, Bodega Bay, California, on Friday, April 11, 2008 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the **Department of Education, 1430 N Street, Sacramento, California, on Friday, June 27, 2008**, at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 20, 2008 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on June 25, 2008. All comments must be received no later than June 27, 2008 at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Neil Manji, Chief, Fisheries Branch, Department of Fish and Game, phone (916) 327-8840, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are projected to have an unknown impact on the net revenues to businesses in the Klamath River area servicing sport

fishermen. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Date: April 1, 2008

John Carlson, Jr.
Executive Director